



Petition to Renew a Current Exemption Under 17 U.S.C. § 1201

9th Triennial Rulemaking

Please submit a separate petition for each current exemption for which renewal is sought.

NOTE: Use this form if you want to renew a current exemption without modification. If you are seeking to engage in activities not currently permitted by an existing exemption, including those that would require the expansion of a current exemption, you must submit a petition for a new exemption using the form available at copyright.gov/1201/2024/new-petition.pdf.

If you are seeking to expand a current exemption, we recommend that you submit both a petition to renew the current exemption without modification using this form, and, separately, a petition for a new exemption that identifies the current exemption and addresses only those issues relevant to the proposed expansion of that exemption.

ITEM A. PETITIONERS AND CONTACT INFORMATION

Please identify the petitioners and provide a means to contact the petitioners and/or their representatives, if any. The “petitioner” is the individual or entity seeking renewal.

This petition is submitted by Peter Decherney, Professor of Cinema and Media Studies and English at the University of Pennsylvania on behalf of himself and by Michael Delli Carpini, Professor and Interim Dean, Annenberg School for Communication, University of Pennsylvania; the Society for Cinema and Media Studies (SCMS) and the Library Copyright Alliance (LCA) hereinafter known as “Joint Educators.”

Parties interested in contacting the submitter should contact Peter DeCherney at decherney@sas.upenn.edu (215-746-3156.)

Privacy Act Advisory Statement: Required by the Privacy Act of 1974 (P.L. 93-579)

The authority for requesting this information is 17 U.S.C. §§ 1201(a)(1) and 705. Furnishing the requested information is voluntary. The principal use of the requested information is publication on the Copyright Office website and use by Copyright Office staff for purposes of the rulemaking proceeding conducted pursuant to 17 U.S.C. § 1201(a)(1). NOTE: No other advisory statement will be given in connection with this application. Please keep this statement and refer to it if we communicate with you regarding this petition.

ITEM B. IDENTIFY WHICH CURRENT EXEMPTION PETITIONERS SEEK TO RENEW

Check the appropriate box below that corresponds with the current temporary exemption (see **37 C.F.R. § 201.40**) the petitioners seek to renew. Please check only one box. If renewal of more than one exemption is sought, a separate petition must be submitted for each one.

Motion Pictures (including television programs and videos):

- Excerpts for use in documentary filmmaking or other films where use is in parody or for a biographical or historically significant nature
- Excerpts for use in noncommercial videos
- Excerpts for use in nonfiction multimedia e-books
- Excerpts for educational purposes by college and university faculty, students, or employees acting at the direction of faculty, or K–12 educators and students
- Excerpts for educational purposes by faculty and employees acting at the direction of faculty in massive open online courses (“MOOCs”)
- Excerpts for educational purposes in digital and literacy programs offered by libraries, museums, and other nonprofits
- For the provision of captioning and/or audio description by disability services offices or similar units at educational institutions for students, faculty, or staff with disabilities
- For the preservation or the creation of a replacement copy of the motion picture by libraries, archives, or museums
- For text and data mining by a researcher affiliated with a nonprofit institution of higher education, or by student or staff at the direction of such researcher, for the purpose of scholarly research and teaching

Literary Works:

- Literary works distributed electronically for text and data mining by a researcher affiliated with a nonprofit institution of higher education, or by student or staff at the direction of such researcher, for the purpose of scholarly research and teaching
- Literary works or previously published musical works that have been fixed in the form of text or notation whose technological protection measures interfere with assistive technologies
- Literary works consisting of compilations of data generated by medical devices or their personal corresponding monitoring systems, to access personal data

Computer Programs and Video Games:

- Computer programs that operate wireless devices, to allow connection to an alternative wireless network (“unlocking”)
- Computer programs that operate smartphones and portable all-purpose mobile computing devices to allow the device to interoperate with or to remove software applications (“jailbreaking”)
- Computer programs that operate smart televisions to allow the device to interoperate with software applications on the television for purposes other than gaining unauthorized access to copyrighted works (“jailbreaking”)
- Computer programs that operate voice assistant devices to allow the device to interoperate with or to remove software applications for purposes other than gaining unauthorized access to copyrighted works (“jailbreaking”)
- Computer programs that operate routers and dedicated network devices to allow the device to interoperate with software applications on the device for purposes other than gaining unauthorized access to copyrighted works (“jailbreaking”)
- Computer programs that control motorized land vehicles, marine vessels, or mechanized agricultural vehicles or vessels for purposes of diagnosis, repair, or modification of the vehicle, including to access diagnostic data
- Computer programs that control devices designed primarily for use by consumers for diagnosis, maintenance, or repair of the device or system
- Computer programs that control medical devices or systems, and related data files, for diagnosis, maintenance, or repair of the device or system
- Computer programs for purposes of good-faith security research
- Video games for which outside server support has been discontinued, to allow individual play by gamers and preservation of games by libraries, archives, and museums (as well as necessary jailbreaking of console computer code for preservation uses only), and discontinued video games that never required server support, for preservation by libraries, archives, and museums
- Computer programs other than video games, for the preservation of computer programs and computer program-dependent materials by libraries, archives, and museums
- Computer programs that operate 3D printers, to allow use of alternative material
- Computer programs for purpose of investigating potential infringement of free and open source computer programs
- Video games in the form of computer programs for purpose of allowing an individual with a physical disability to use alternative software or hardware input methods

ITEM C. EXPLANATION OF NEED FOR RENEWAL

Provide a brief explanation summarizing the continuing need and justification for renewing the exemption. The Office anticipates that petitioners will provide a paragraph or two detailing this information, but there is no page limit. While it is permissible to attach supporting documentary evidence as exhibits to this petition, it is not necessary. Below is a hypothetical example of the kind of explanation that the Office would regard as sufficient to support renewal of the unlocking exemption. The Office notes, however, that explanations can take many forms and may differ significantly based on the individual making the declaration and the exemption at issue.

Joint Educators submit this petition to renew the Massive Open Online Course or “MOOC” exemption for use of audiovisual works for educational purposes as currently set forth in 37 CFR § 201.40 (b) (1) (ii) (B).

As the Register first recognized in the 2015 Triennial Review process, as a result of technological advancement, the MOOC exemption is a natural extension of the well-established exemption to prohibition against circumvention for motion pictures and audiovisual works for educational purposes. The MOOC exemption is the most recent addition to the long established “motion pictures” exemption set forth in 37 CFR § 201.40 (b) (1) which has been accepted and renewed in the 2006, 2011, 2015, 2018 and 2021 Copyright Office rulemakings. As technology advanced with respect to offering educational courses online and demand expanded, so did the need to make the same exemptions available in offline courses to online courses. This exemption has become even more vital since the COVID-19 pandemic and the continuing shift of our education systems to include online learning.

MOOCs are online educational courses. Aside from video instruction, MOOCs may feature online quizzes and forums to encourage student engagement, virtual office hours where professors engage with students, and graded assignments (using software or peer students to do the grading) to evaluate what students learn from the course. MOOCs are offered in a wide range of subjects and are available in many different languages. MOOCs provide a tremendous public benefit by making college and university courses available to anyone with an Internet connection. MOOCs have increased access to education by offering participants flexibility in their educational experience and offering anyone with Internet access the opportunity to learn from the most esteemed professors in their fields. The 2015 MOOC exemption and its renewal in 2018 and 2021 were important steps in addressing the expanding field of online education. The exemption allows institutions and instructors to develop, provide, and improve MOOCs. Instructors and learners can engage in the best and most technologically advanced educational experience possible.

A renewal of this exemption is essential to provide faculty and learners participating in MOOCs the same ongoing access to audiovisual materials as their counterparts in the physical classroom. While the use of media in MOOCs is closely tied to the use of media in traditional classes, the exemption has brought clarity to the educational practice of teaching with and about media. For example, before the exemption was granted, there were only 2 or 3 MOOCs in the field of film and media studies, and they relied primarily on public domain examples. Today, there are dozens more MOOCs on film and media offered by US colleges, universities, and others. Petitioner Professor Decherney’s popular course on the history of Hollywood has now reached nearly 75,000 students in over 190 countries. As a result of the growth of online learning during the pandemic, his enrollment has more than doubled since March 2020. In the course, he offers close readings of Hollywood classics like King Kong (1933) and Casablanca (1942) and analyzes digital special effects, sound design, and other elements of filmmaking. Other film and media studies MOOCs explore Hong Kong cinema, the psychology of memory and film, and marriage and the movies. The U.S. still lags far behind the United Kingdom and other countries in film and media studies MOOC production.

Examples of the need for this exemption are not limited to film and media studies. In Professor Al Filreis’s popular MOOC on Modern Poetry, he uses clips from MTV videos featuring Maggie Estep’s spoken word/performance art to show how the Beat poetic tradition converged with the rise of MTV in the late 1980s and early 1990s. The best way students in the Modern Poetry course would get a sense of Estep’s work—it was also written and published on paper but this is not her major mode—is to watch one of the MTV videos, with all the explicit and implicit MTV signifiers.

This exemption is critical to allow this popular and universal form of education to flourish. Renewal would ensure that 1201 exemptions remain in line with technological advances in online educational offerings incorporating non-infringing fair use of copyrighted works. For these reasons, Joint Educators request that this important exemption be renewed.

ITEM C. EXPLANATION OF NEED FOR RENEWAL (CONT'D)

[Empty box for explanation of need for renewal]

ITEM D. DECLARATION AND SIGNATURE

The declaration is a sworn statement made under penalty of perjury and must be signed by one of the petitioners named above.

I declare under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. Based on my own personal knowledge and experience, I have a good faith belief that but for the above-selected exemption's continuation during the next triennial period (October 2024–October 2027), technological measures controlling access to relevant copyrighted works are likely to diminish the ability of relevant users to make noninfringing uses of these works, and such users are likely to rely upon the above-selected exemption during the next triennial period.
2. To the best of my knowledge, there has not been any material change in the facts, law, or other circumstances set forth in the prior rulemaking record (available at copyright.gov/1201/2021) that originally demonstrated the need for the above-selected exemption, such that renewal of the exemption would not be justified.
3. To the best of my knowledge, the explanation provided in Item C above is true and correct and supports the above statements.

Name/Organization:

If the petitioner is an entity, this declaration must be signed by an individual at the organization having appropriate personal knowledge.

Peter Decherney, of Cinema and Media Studies and English at the University of Pennsylvania, on behalf of himself and Joint Educators

Signature:

This declaration may be signed electronically (e.g., "/s/ John Smith").

/s/ Peter Decherney

Date:

07/07/23